IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1182 of 1988

Date of Decision: 2.12.2004

KANTUBEN JAYSINGBHAI NAIKA

Versus

RAMANBHAI CHHAGANBHAI

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

AAAAAAAAAAA

1. First Appeal No. 1182 of 1988
MR DR BHATT for Appellant No.
NOTICE SERVED for Respondent No. 1-2
MR NS TAHILRAMANI for Respondent No. 3 (absent)

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

This appeal is directed against the award of the Motor Accident Claims Tribunal, Valsad at Navsari in

Claim Petition No. 335 of 1985 dated April 2, 1988. Jaysingbhai Somabhai Naika (deceased) was a labourer doing the earth work with opponent NO. 2 on 18.2.1985.

Whether reporters of Local Papers may be allowed to see the Judgment?

He had gone to village Kalvada in a truck with other five labourers for digging earth and transporting the same. At about 8.00 p.m. , the labourers were digging the earth and at that time, the truck No. GTO 2021 belonging to the opponent NO.2 and driven by opponent No.1 standing there was taken in reverse as a result of which the deceased was pressed into the earth. After shouts, drier took the vehicle ahead but the deceased had been buried inside the earth, therefore, pulled out. However, he died. Body was removed to his house and his wife and children were left without sole bread winner of the family aged 22 years earning Rs.15.00 per day. compensation of Rs. 1,50,000.00 is claimed. Opponents have opposed the claim. Age and income of the deceased, rash and negligent driving of the vehicle have also been denied. The Claims Tribunal found that the accident took place as alleged due to rash and negligent driving of the truck by its driver, therefore, liable for the same. Consequently, compensation of Rs.60000.00 has been awarded with interest at the rate of 9 per cent p.a. from the date of the application till the realization with proportionate costs and equal distribution amongst two claimants. Insurance Company has been exonerated from the payment of the compensation in terms of section 95(1)(b) of the Motor Vehicles Act, 1939 and the decision of this Court in Oriental Fire and General Insurance Co. Ltd. v/s. Rabari Gandu Punja and others, AIR 1981 Gujarat page 200. Meaning thereby, accident did not take place in a public place. Through this appeal, the claimants have challenged the exoneration of the insurance company from the liability of payment of compensation and have also prayed for enhancement of the compensation. We do not agree with this finding. The facts in Oriental Fire and General Insurance Co. Ltd. v/s. Rabari Gandu Punja and others, AIR 1981 Gujarat page 200 are different, undeniably, the area was private within confined limits while grass land in this case is open accessible to the public. The deceased was one of the labourers in the truck who had been sent to fetch sand from the site, therefore, can be held to be public place on limited facts on record, since plea that the place in question is a private and not a public place has not been raised by the insurance company in its written statement before the Claims Tribunal. If the Insurer

wants to contend that the place where the incident took place was not a public place, that plea has to be raised in the written statement and evidence to that effect has to be led to establish that plea. Since such a plea has not been raised by the insurance company in its written statement, neither evidence can be led nor submissions made by the insurer. Accident did not take place in enclosed premises of a private person. It was an open place accessible to all for sand. Even from the panchanama, it is not clear to whom it belonged. Even if it is assumed that it belonged to some one, still, the place was open and accessible to all and the owner has not objected to the taking of sand particularly in absence of pleading and evidence to that effect. Consequently, conclusion of the claims tribunal to the contrary is unsustainable on law and facts, therefore, set aside. Plea as regards enhancement of compensation is rejected since we are of the opinion that just compensation has been awarded by the claims tribunal.

Accordingly, this appeal is partly allowed. Award of the Claims Tribunal is modified to the extent that the owner and driver of the vehicle are jointly and severally liable. Since this vehicle was insured with the Oriental Fire and General Insurance Co. Ltd., compensation shall be paid by the said Insurance Co. Insurance Company shall pay the compensation with interest and costs as awarded by the Claims Tribunal within a month from the date of this judgment.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

#vyas#